

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

JAN 30 2018

TODD OLLIS,

Plaintiff,

v.

Civil Action No.: 2:17cv33

**NANCY A. BERRYHILL,
Acting Commissioner of Social Security,**

Defendant.

ORDER

Plaintiff Todd Ollis (“Plaintiff” or “Ollis”) brought this action under 42 U.S.C. §§ 405(g), 1383(c)(3), seeking judicial review of the final decision of the Acting Commissioner of the Social Security Administration (“Commissioner”) denying his claim for a period of disability and disability insurance benefits (“DIB”) under Title II of the Social Security Act (“SSA”), as well as his claim for Supplemental Security Income (“SSI”) under Title XVI of the SSA. Pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, Rule 72 of the Local Rules of the United States District Court for the Eastern District of Virginia, and by order of reference dated December 28, 2016, this matter was referred to a United States Magistrate Judge for a Report and Recommendation. Doc. 12.

The Report and Recommendation of the Magistrate Judge (“R&R”), filed on December 18, 2017, found that the Administrative Law Judge (“ALJ”) failed to properly account for Plaintiff’s “moderate difficulties” with respect to maintaining concentration, persistence, and pace, in determining Plaintiff’s residual functional capacity (“RFC”). Doc. 17 at 22–29. The R&R recommends that a remand is necessary for the ALJ to explain whether and how Plaintiff is

supposed to be able to perform light work despite these moderate mental functional limitations. Id. at 29. The R&R also found that substantial evidence supports the ALJ's finding that Ollis's statements about the intensity, persistence, and limiting effects of his symptoms were only partially credible. Id. at 30–34. Accordingly, the Magistrate Judge recommended that Plaintiff's Motion for Summary Judgment, Doc. 14, be GRANTED IN PART and DENIED IN PART; that the Commissioner's Motion for Summary Judgment, Doc. 15, be DENIED; and that the final decision of the Commissioner be VACATED and REMANDED for further proceedings consistent with the R&R. Id. at 34.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date the R&R was sent, pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. Id. at 34–35. The time for filing written objections has now passed, and neither party has filed objections. As indicated in the R&R, failure to file timely objections to the findings and recommendations set forth in the R&R “will result in waiver of right to appeal from a judgment of this Court based on such findings and recommendations.” Id. at 35.

This Court has reviewed the R&R of the Magistrate Judge and hereby adopts and approves in full the findings and recommendations set forth therein. Accordingly, it is hereby **ORDERED** that the Commissioner's Motion for Summary Judgment, Doc. 15, is **DENIED**, that Plaintiff's Motion for Summary Judgment, Doc. 14, is **GRANTED IN PART** and **DENIED IN PART**, and that the Acting Commissioner's final decision is **VACATED** and **REMANDED** for further proceedings consistent with this Court's Order.

Plaintiff is advised that he may appeal from this Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty

(60) days from the date of this Order. If Plaintiff wishes to proceed in forma pauperis on appeal, Plaintiff must submit the application to proceed in forma pauperis to the Clerk, United States Court of Appeals, Fourth Circuit, 1100 E. Main Street, Richmond, Virginia 23219.

The Clerk is **REQUESTED** to send a copy of this Order to all counsel of record.

It is so **ORDERED**.

/s/
Henry Coke Morgan, Jr.
Senior United States District Judge
HENRY COKE MORGAN, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 29, 2018